

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DANIEL JAURIGUI,

Plaintiff,

vs.

No. CIV 20-0828 JB/LF

CHRIS BRICE and
U.S. MARSHAL SERVICE

Defendants.

MEMORANDUM OPINION AND ORDER

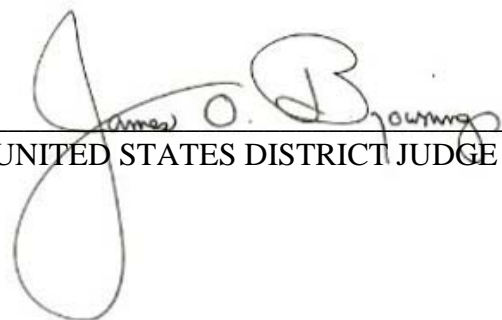
THIS MATTER comes before the Court sua sponte following the dismissal of Petitioner Daniel Jaurigui's Petition Under 28 U.S.C. § 2241 For a Writ of Habeas Corpus, filed August 17, 2020 (Doc. 1)("Petition"). Jaurigui challenges the execution of his federal sentence, and in particular, the United States Bureau of Prisons' refusal to transfer him to his federal facility. See Petition at 1. On September 3, 2020, Jaurigui filed a Motion for Leave to Proceed in Forma Pauperis, which sought to defer prepayment of the \$5.00 filing fee in this habeas proceeding. See Motion for Leave to Proceed In Forma Pauperis, filed September 3, 2020 (Doc. 5)("IFP Motion"). By a Memorandum Opinion and Order filed October 6, 2020, the Court denied the IFP Motion and directed Jaurigui to pay the \$5.00 habeas filing fee by November 5, 2020. See Memorandum Opinion and Order filed October 6, 2020 (Doc. 6)("IFP MOO").

Jaurigui initially failed to pay the filing fee, as the Court directed, and the Luna County Detention Center returned the IFP MOO as undeliverable. See Mail Returned as Undeliverable entered October 20, 2020 (Doc. 7). The Court prepared a Memorandum Opinion and Order, and a Final Judgment, dismissing the Petition without prejudice for failure to prosecute and comply with Court Orders. See Memorandum Opinion and Order, filed November 12, 2020 (Doc.

9)(“Dismissal MOO”); Final Judgment, filed November 12, 2020 (Doc. 10)(“Judgment”). After the Court approved the Dismissal MOO and Judgment, but before their entry on the docket, Jaurigui paid the filing fee. See Filing Fee: \$5.00, receipt number ALB048252, filed November 16, 2020 (Doc. 11). The Clerk entered the Dismissal MOO and Judgment around the same time Jaurigui submitted his untimely payment.

Rule 60(a) of the Federal Rules of Civil Procedure permits courts to set aside a judgment “on its own [motion], with or without notice,” and to correct a clerical or ministerial issue in the record. Fed. R. Civ. P. 60(a). Rule 59(e) of the Federal Rules of Civil Procedure also permits the Court to set aside a judgment to prevent injustice. See Hayes Family Tr. v. State Farm Fire & Cas. Co., 845 F.3d 997, 1004 (10th Cir. 2017). The Court, in its discretion and on its own initiative, elects to overlook the late payment, and vacate the order in the Dismissal MOO and set aside the Final Judgment pursuant to rules 59(e) and 60(a) of the Federal Rules of Civil Procedure. The Clerk will reopen the case, and the Court will screen the Petition on the merits.

IT IS ORDERED that: (i) the Court hereby vacates the order in the Memorandum Opinion and Order filed November 12, 2020 (Doc. 9), and the Final Judgment, filed November 12, 2020 (Doc. 10); and (ii) the Clerk’s Office shall reopen this habeas case.



UNITED STATES DISTRICT JUDGE

Pro Se Plaintiff:

Daniel Jaurigui
Luna County Detention Center
Deming, New Mexico